



PRESCRIBED PSYCHIATRIC TREATMENT

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Mental Health Act 2009
Advance Care Directives Act 2013

WHAT IS PRESCRIBED PSYCHIATRIC TREATMENT?

There are two categories of prescribed psychiatric treatment identified in the *Mental Health Act 2009* (the Mental Health Act)– electro convulsive therapy (ECT) and neurosurgery for mental illness.

Prescribed psychiatric treatment is different to prescribed *medical* treatment under the *Guardianship and Administration Act 2013*. *For more information about prescribed medical treatment see Information sheet 10*

NEUROSURGERY FOR MENTAL ILLNESS

The provisions relating to neurosurgery are in section 43 of the Mental Health Act. Neurosurgery for mental illness means leucotomy, amygdaloidotomy, hypothalamotomy, temporal lobectomy, cingulectomy, electrode implantation in the brain or any brain surgery for the relief of mental illness by elimination or stimulation of apparently normal brain tissues.

This surgery must be authorised by two psychiatrists (at least one being a senior psychiatrist), each of whom has separately examined the patient, as well as the person who is to carry out the surgery. The patient must be 16 years or over. This surgery requires the written consent of the patient or the consent of the South Australian Civil and Administrative Tribunal (the Tribunal) if the patient cannot give consent.

ELECTRO CONVULSIVE THERAPY (ECT)

Electro convulsive therapy is regulated by section 42 of the Mental Health Act. ECT can only be administered to a patient who has a mental illness, and must be authorised by a psychiatrist who has personally examined the patient.

ECT must not be administered without consent. If the person is capable of giving effective consent, their consent to the treatment must be in writing. If the person is unable to consent due to impaired decision-making capacity,

- a substitute decision-maker appointed under an advance care directive, or
- a guardian appointed by the Tribunal (or, before 30 March 2015, by the Guardianship Board), or
- the Tribunal

can consent, or refuse to consent to ECT.

If a person has refused ECT in an advance care directive and the refusal is applicable to their current clinical situation, then ECT must not be administered.

An application to the Tribunal for consent to ECT can be made by a medical practitioner or mental health clinician.

Consent is for a maximum period of 3 months and a maximum of 12 treatments.

Office of the Public Advocate

The Public Advocate is an independent statutory officer accountable to the South Australian Parliament.

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April 2015

Where treatment is urgently required for the patient's well-being, and it is not practicable to obtain consent, and there is no refusal of consent in an advance care directive, a psychiatrist can authorise one episode of treatment only.

A parent or a guardian can consent to ECT for a child who is under 16 years of age.

DISSATISFACTION WITH DECISION OF GUARDIAN, SUBSTITUTE DECISION –MAKER OR PARENT

Where disputes arise regarding decisions about ECT under an advance care directive advice can be sought from the Office of the Public Advocate.

The Office of the Public Advocate has legal authority under Section 45 of the *Advance Care Directives Act 2013* and Section 18C *Consent to Medical Treatment and Palliative Care Act 1995* to mediate health care disputes for both adults and children, including mental health disputes. This is a 24hr service (*emergency matters only after hours*).

As a last resort, an application may be made to the Tribunal to hear the matter and determine the dispute.

See Information Sheet 27: Office of the Public Advocate's Dispute Resolution Service

REVIEWS AND APPEALS

If a person disagrees with a decision of the Tribunal to consent to ECT or neurosurgery they can apply for a review of that decision. The review will be undertaken by senior members of the Tribunal who were not involved in the original decision. The review will be a fresh look at the decision, using the information provided when the order was made and any other relevant information accepted by the Tribunal. An application for review must be made within one month of the decision. Anyone who has a proper interest in the matter may apply, including the person to whom the proceedings relate, the person who made the application, and any person who gave evidence when the decision was made.